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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,465	10/03/2003	Andrew Paul Ormerod	F3318(C)	3327

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EXAMINER	
DOERRLER, WILLIAM CHARLES	
ART UNIT	PAPER NUMBER
3744	

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

C

Office Action Summary	Application No.	Applicant(s)	
	10/678,465	ORMEROD ET AL.	
	Examiner	Art Unit	
	William C. Doerrler	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 June 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8 and 10-16* is/are rejected.

7)☒ Claim(s) *9 and 17* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *5-10-2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, from which the above claims depend claims two alternative firming treatments. Each of the above claims further limits one of the possible firming treatments. Thus, it is possible that the dependent claims are limiting treatments that are not found in the independent claim. For example, claim 1 claims the firming processes in the alternative, so it is possible that only the heating step is performed. When the salt solution is further defined later, the claims are defining a step which was not performed in the performance of claim 1. This can be remedied by adding to the dependent claims which firming step is being performed. For example, adding to claim 2, "wherein the firming step comprises the immersion in a calcium salt" after "according to claim 1".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5-8,10,11, and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bourne '712.

Bourne '712 shows a food freezing system which heats the vegetables being treated to 140-150 F (60-68C) and using calcium salts during the heating to maintain the firmness of the vegetables (see abstract). The vegetables are stored at 0F (-18C), see column 4 line 23, so they must inherently be reduced in temperature less than -5C and equal to -18C. The vegetables treated are listed in the first paragraph of the detailed description in column 3. The calcium salts are listed in lines 7-11 of column 5. In regard to claims 10 and 14-16, since Bourne discloses the same process as applicants' claim, any material treated by the process is seen to have the same characteristics.

Claims 1-5 and 10-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Frane et al.

Frane et al discloses a preservation method for vegetables which uses calcium salts before freezing the vegetables to 0F (-18 C). While the heating steps of Frane et al do not match those in applicants' claim 1, this is seen as immaterial since the calcium salts are an alternative t the heating. Since the final temperature of Frane et al is -18 C, the temperature inherently passed -5C as claimed in part (ii) of claim 1. Calcium citrate (for

claim 2) is found in line 68 of column 2. In regard to claim 4, the calcium limit is found at the top of column 3. In regard to claim 5, example 1 immerses the vegetables in the solution for 7 minutes. In regard to claims 10 and 14-16, since Frane et al discloses the same process as applicants' claim, any material treated by the process is seen to have the same characteristics. In regard to claim 12, see example 2.

Claims 1,2,6,7,10,11 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bengtsson et al.

Bengtsson et al discloses a blanching method for vegetables which heats the vegetables to applicants' claimed range (see examples) and teaches calcium chloride as a firming treatment (see line 15 of column 2). The vegetables of the reference are stored at -20 or -30C (see examples), so they are inherently cooled to less than -18C. In regard to claims 10 and 14-16, since Bengtsson et al discloses the same process as applicants' claim, any material treated by the process is seen to have the same characteristics.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourne '712.

Bourne'712 discloses applicants' basic inventive concept, a vegetable freezing method which treats the vegetables with a calcium salt and heats the vegetables to about 65C before freezing them to -18, substantially as claimed with the exception of specifying the percent of calcium in the solution or cooling tomatoes. Bourne specifies the remaining calcium in the product, but not the amount of calcium in the solution to produce this. While it is believed by the examiner that applicant's claimed range will leave the desired calcium in the product of Bourne, one of ordinary skill n the art would consider such a solution to impart the desired effects taught by Bourne. Likewise, the preserving of tomatoes is seen as obvious since Bourne discloses a method of preserving grown foodstuffs and tomatoes are a well known, commonly preserved grown food.

Allowable Subject Matter

Claims 9 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 6-2-2006 have been fully considered but they are not persuasive. In regard to the 112 rejection, it is agreed that the dependent claims are limiting words which are found in claim 1. However, the dependent claims limit steps which are claimed in the alternative. The dependent claims should positively recite which method steps are being used from claim 1.

In regard to the art rejections, it is unclear how a reference which specifies freezing vegetable to -18 degrees does not inherently cool the vegetables to -5 degrees, as -5 degrees will be between the starting temperature and the ending temperature. Applicants' have not claimed maintaining the -5 degree temperature for any period of time, or any cellular or conditional result which must be achieved at -5 degrees, so the references are seen as inherently performing the claimed step of cooling to -5 degrees. It is further noted that applicant's have claimed cooling to -5 degrees " or less". Thus a reference can cool to -18 degrees once and meet the limitations of both steps (ii) and (iii). The fact that applicants have discussed in the specification a two-step freezing process does not change the fact that the references disclose what is being claimed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Doerrler whose telephone number is (571) 272-4807. The examiner can normally be reached on Monday-Friday 6:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William C Doerrler
Primary Examiner
Art Unit 3744